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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/589,405

08/11/2006

John W. Babich

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FOLEY & LARDNER LLP  
111 HUNTINGTON AVENUE  
26TH FLOOR  
BOSTON, MA 02199-7610

EXAMINER

JONES, DAMERON LEVEST

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

05/16/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/589,405	<b>Applicant(s)</b> BABICH ET AL.	
	<b>Examiner</b> D. L. Jones	<b>Art Unit</b> 1618	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 2/7/11.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 58-95 and 133-135 is/are pending in the application.
- 4a) Of the above claim(s) 58-73, 134 and 135 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 74 and 133 is/are rejected.
- 7) ☒ Claim(s) 75 and 76 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/24/11; 5/3/11; &amp; 11/4/10</u>                            | 6) <input type="checkbox"/> Other: _____                          |

## **ACKNOWLEDGMENTS**

1. The Examiner acknowledges receipt of the amendment filed 2/7/11 wherein the specification was amended; claims 1-57, 96-132, and 136 were canceled; and claims 58, 61, 74, 77, 133, and 134 were amended.

**Note:** Claims 58-95 and 133-135 are pending.

## **RESPONSE TO ARGUMENTS/AMENDMENT**

2. The Applicant's arguments and/or amendment filed 2/7/11 to the rejection of claims 74-76 and 133 made by the Examiner under 35 USC 102 and/or 112 have been fully considered and deemed persuasive because Applicant has amended the claims to overcome the rejections. Therefore, the said rejections are hereby withdrawn.

**Notes:** The search has once again been expanded. Prior art (Saalfrank et al) was once again been found which is used to reject Applicant's claims. Thus, the search was not further expanded.

## **WITHDRAWN CLAIMS**

3. Claims 58-73, 134, and 135 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention/species.

## **NEW GROUNDS OF REJECTIONS**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

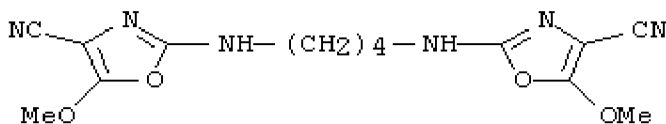
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 74 and 133 are rejected under 35 U.S.C. 102(b) as being anticipated by Saalfrank et al (Chemische Berichte, 1989, Vol. 122, No. 5, pages 969-973).

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**Saalfrank et al** disclose a compound encompassed by Applicant's Formula H.

Specifically, Saalfrank et al is directed to germinal vinyl diazides. In particular, the compound



(2, 2'-(1,4-butanedioldiimino)bis[5-

methoxy-4-oxazolecarbonitrile) is disclosed (see entire document). The compound reads on

Applicant's Formula H when X = oxygen; m = 0; n = 2; R<sub>3</sub> = hydrogen; R (the substituent

closest to the oxygen atom in the ring) = alkoxy; and R (the substituent closest to the nitrogen

atom in the ring) = cyano (see entire document, especially, page 970, Compounds 9a-f, page

970, left column).

### CLAIM OBJECTIONS

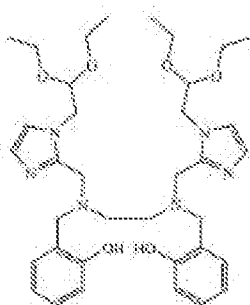
6. Claims 75 and 76 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Note:** Claims 75 and 76 are objected to only as they read on the species of Saalfrank et al.

### COMMENTS/NOTES

7. It should be noted that no prior art was cited against Applicant's elected species.

Applicant elected Formula H and the species of Example 4, as set forth below:



8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571)272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from

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a USPTO Customer Service Representative or access to the automated information system,  
call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. L. Jones/  
Primary Examiner  
Art Unit 1618

May 8, 2011